IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.360 OF 2004

M/s.V.V.F. Ltd. and others. ...Petitioners.

vs.

Sarva Shramik Sangh and another. ...Respondents.

Mr.P.C.Pawaskar, for Petitioners.

Mr.N.M.Ganguli, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 25th July, 2006.

P.C.:-

1, By this petition, the petitioners challenge the interim order passed by the Industrial Court in the Complaint (ULP) No.475 of 2003. By that interim order the Industrial Court has directed the petitioners to extend the monetary benefits to the workers whose names are contained in the list at Annexure-A to the complaint on par with the other workers under the settlement dated 10.4.2003 on their signing an undertaking with the note that they are signing the undertaking without prejudice to the rights of these workers in respect of their

charter of demands pending in conciliation proceedings. The admitted facts are that the employer has reached the settlement with the majority union on 10.4.2003. It is also admitted fact that out of about 600 employees only 71 employees have not signed the settlement. The complaint was moved before the Industrial Court by the respondent no.1-Union seeking direction from the Industrial Court for making the benefits of the settlement available to the workmen represented by it without requiring them to sign the undertaking which would have precluded them from pursuing their charter of demands which is pending in the conciliation proceedings. An application for interim relief was filed almost for the same reliefs. By the order impugned in the petition, the Industrial Court has granted that interim relief. The Industrial Court has granted that relief by observing that the respondent no.1-Union is the recognized union. As this was factually incorrect, the petitioner applied for review of the interim relief, but that application for review has also been rejected. Both these orders are challenged in the present petition.

2. I have heard the learned Counsel appearing for both the sides. Perusal of the settlement arrived at between the majority union and the employer shows that one of the important clauses of the settlement is “clause 3” which reads as under:-

> “3. The demands which have not been agreed

> upon or settled as above, will be construed as if they have been either settled or withdrawn and they will not be raised again during the currency of this settlement, that the workmen and Union further agree not to raise any demand which would entail additional financial burden on the Company during the currency of this settlement."

The duration of the settlement is three years. The intention behind incorporating this clause is clear that the employer wanted industrial peace. There is clear term contained in the settlement which reads as under:-

> "That benefits of the settlements will be available only to those of workmen who agree to the terms of this settlement by signing the undertaking/declaration as per Annexure "A" in token of their acceptance."

The undertaking which is in Annexure "A" to the plaint reads as under:-

> "I,_____ Ticket No._____ hereby inform you that I have read/have been explained the terms of the settlement dated _____ fully and I have understood the same and I accept the terms of the settlement in toto. Kindly grant me the

> benefits of the settlement and I hereby declare that I am bound by the said settlement."

Thus, the benefits of the settlement are available only to those workmen who sign the undertaking and accept the settlement. One of the important terms of the settlement is that the workmen will not raise any demand which would entail additional financial burden on the employer during the period the settlement remains in force. The respondent no.1-Union was seeking order from the Industrial Court that its members should be permitted to enjoy the benefits of the settlement without prejudice to their rights to continue with their charter of demands pending in conciliation. Really speaking permitting the members of the respondent no.1-Union to avail of the benefits of the settlement without accepting the essential term of the settlement would have resulted in creating a separate and distinct class amongst the workmen so far as members of respondent no.1-union are concerned. The Division Bench of this Court in its judgment in the case "Tata Consulting Engineers And Associates Staff Union Vs. Tata Consulting Engineers & Another, 2002 I CLR 701" has considered an identical situation. The Division Bench in paragraph (7) has observed thus:-

> "7. Regarding the grievance that there is "unfair labour practice" by the company, the learned

> counsel for Respondent No.1 is right in contending that both the classes of employees cannot be said to be similarly situated. Since the case does not fall under sub-sec.(3) of S.18 of the Act, but is covered by sub-sec.(1), obviously, the benefits can be extended to those employees who had entered into settlement. Such settlement creates rights in favour of one party, and, at the same time, it creates obligations. It a person does not give an undertaking, which is a part and parcel of the voluntary settlement arrived at between the parties otherwise than in conciliation proceedings, he cannot claim benefits under the said settlement."

The learned Single Judge of this Court in its judgment in the "Association of Engineering Workers Vs. WMT Cranes Ltd. and another, 2001 LLR 173", has considered the validity of a clause in the settlement obliging the workmen not to raise demand during the currency of settlement and has found that such a clause is specially valid. Paragraph 9 of that judgment is relevant which reads as under:-

> "9. We now come to Clause 26. The first part of the clause is that the workmen/staff and/or union, shall not make any fresh demands during currency of this settlement involving additional financial burden to the company. In my opinion, such a clause cannot be faulted. Once a company inters into a settlement it so enters to ensure industrial

peace and harmony in its establishment for the period of settlement. Courts cannot interfere in such a clause because ultimately it is the paying capacity of the industry which is considered whilst entering into settlement and the need for industrial peace. Therefore, in my opinion the first part of Clause 26 cannot be faulted and cannot be interfered with specially when this Court is exercising its extraordinary jurisdiction under Articles 226 and/or 227 of the Constitution of India. That leaves us with the other clause whereby the undertaking is compelled to deduct from the wages of the workmen the subscription on behalf of the Respondent No.2. Prima facie such a clause would amount to an act of unfair labour practice. The Union may enter into an agreement with the employer for deduction on behalf of its members if the members are so agreeable for the purpose of directly deducting membership dues from the wages such a clause cannot be foisted on unwilling workers or members of other unions. This would be destroying the very concept of a trade union movement and creating monopolies. Even considering the provisions of the M.R.T.U. And P.U.L.P. Act, though the Act recognizes a recognised Union and confers certain powers on the recognized Union, it does not and has not prohibited other Unions in the industry. Once that be so, prima facie Clause 26 must be held to be an act of unfair labour practice and the respondent No.1 cannot compel

> the other workers or members of petitioner Union to give an undertaking to make deductions from their wages and contribute by way of membership to the membership of the Respondent no.2 of which they are not members."

Now if clause (3) of the settlement is valid and it is clear that it is an essential term of the settlement then permitting the members of the respondent no.1-Union to avail of the benefits of the settlement and at the same time to act in breach of clause (3) of the settlement would be creating disparity between the majority of the workers who have signed the settlement as it is for availing of the benefit and have given up their rights to raise demands during the currency of the settlement and the members of the respondent no.1 Union who would be permitted to avail of the benefits of settlement without giving up their rights to continue with their charter of demands. The effect of the order passed by the Industrial Court is thus, creating two different classes of workmen without their being any rational for creating different classes amongst the workmen. I do not see any justification why more than 500 workmen get benefits of the settlement after giving up their right to raise demands during the currency of settlement. Whereas the balance 71 workmen get the same benefits without giving up their rights to raise a demands. The Industrial Court has not given any justification for giving such unequal treatment to two sets of

workmen. The Industrial Court has observed that such an interim order is necessary for parity amongst the workmen. The net result of interim order is that it results in creating disparity amongst the workmen. The order of the Industrial Court is really infirm and therefore, is liable to be set aside. In the result therefore, the petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a). No order as to costs.